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March 20, 1997

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Federal Communications Commission
Office of Secretary

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Applications for Minor Changes in Facilities
Per Report and Order in MM Docket No. 94-78
Radio Stations WBAM-FM and WBHK(FM)

Dear Mr. Caton:

The purpose of this letter is to request, on behalf of the licensees of Station WBHK(FM) in Warrior, Alabama, and Station WBAM-FM in Montgomery, Alabama, a ninety day extension of the time for filing minor change applications for construction permits specifying operation on Channels 254C1 and 255C1 respectively.

On December 11, 1995, the Commission released a Report and Order in MM Docket No. 94-78, 10 FCC Rcd 13630 (1995), in which it amended the FM Table of Allotments in §73.202(b) of the Rules to allot Channel 254C1 to Warrior and Channel 255C1 to Montgomery. The Report and Order also modified the licenses of WBHK (then known as WLBI) and WBAM-FM to specify operation on the new upgraded channels subject to certain conditions, one of which was:

"Within 90 days of the effective date of this Order, the licensees shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility."

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Mr. William F. Caton
March 20, 1997
Page 2

The Order said that its effective date was January 25, 1996. It did not, however, become effective on that date because, prior thereto on January 11, 1996, a petition for reconsideration was filed by William P. Rogers ("Rogers"). Rogers was a party adversely affected by the Order. He had filed a counterproposal in the rulemaking proceeding that was inconsistent with the allotments proposed by the licensees of WBAM-FM and WBHK, but had been rejected in the Report and Order. Under §1.420(f) of the Rules then in effect, the result of filing his petition for reconsideration was automatically to "stay the effect of [the] change in the rules pending action on the petition."

In August 1996, with Rogers' petition still pending, the Commission amended §1.420(f) of the Rules to delete the automatic stay of the effect of any amendment of the table of FM allotments resulting from the filing of a petition for reconsideration (FCC 96-301, 61 Fed. Reg. 43468). That Order deleting the automatic stay was by its terms made effective on September 23, 1996.

Though no further order has been issued in the rulemaking proceeding making clear the date by which upgrade applications must now be filed, it was possible to construe the December 1995, Report and Order as having become effective on September 23, 1996, thereby triggering as of that date the running of the ninety days within which the licensees of WBHK and WBAM-FM are required to file their minor change applications for construction permits specifying new C1 facilities. This would have required that the applications be filed not later than December 23, 1996.

Because of the continued pendency of the Rogers petition for reconsideration, construction by WBHK and WBAM-FM of their new facilities would have been at their own financial risk in the event that the Commission Order making the channel allotments should ultimately be modified.

For that reason and because the licensee of WBHK was still engaged in negotiations for a suitable new transmitter site for WBHK, and the spacing requirements of the rules made the selection of the WBHK site and filing of its application a necessary prerequisite to the filing of the WBAM-FM application, the licensees of both stations filed on December 6, 1996, a request for extension of the time for filing their minor change applications for construction permits for new C1 facilities. They requested that the period for filing be extended to and including March 24, 1997.

Mr. William F. Caton
March 20, 1997
Page 3

On February 21, 1997, the Chief of the Policy and Rules Division of the Mass Media Bureau denied Rogers' petition for reconsideration in MM Docket No. 94-78 (DA 97-332). Public notice of that action appeared in the Federal Register on March 3, 1997 (62 Fed. Reg. 9375).

Section 1.115(d) of the Rules allows Rogers until April 2, 1997, to file an application for review by the Commission of that staff action by delegated authority. Undersigned counsel has been advised by counsel for Rogers that he has this day filed an application for review. Accordingly, construction by WBHK and WBAM-FM of their new facilities will continue to be at their own risk until final disposition of the application for review.

For that reason, and because the licensees of both stations continue to be in negotiations as to choice of the most appropriate site for the new WBHK facility, between themselves and in consultation with H and P Radio Birmingham, LLC, which has contracted to purchase WBHK in an assignment that is pending before the Commission for its consent (File No. BALH-960808GE), the licensees request that the time for filing their minor change applications for construction permits for new C1 facilities be extended, if an extension be required, for ninety days from March 24, 1997. This would extend the period for filing the applications to and including June 22, 1997.

Counsel for Rogers has advised that he will not oppose this request for extension. The policy of the Audio Services Division, Mass Media Bureau, in dealing with requests such as this has been stated as follows (see letter dated April 5, 1995, from the Division Chief to the licensee of Station WQXE(FM), Elizabethtown, KY, 1800B3-RPC):

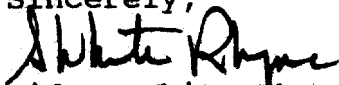
"The Commission's staff accepts justifiable requests for extension of time to file upgrade applications, and if no objection is received, the additional time is generally afforded. Due to the Commission's limited resources, the staff does not issue letters granting such requests."

In view of this policy, unless advised of a denial of this request, the licensees of the stations will assume it has been granted. They have selected tentative C1 sites and are prepared if required to file for those sites on short notice. Accordingly, in the unforeseen event that this request for a ninety

Mr. William F. Caton
March 20, 1997
Page 4

day extension should be denied, the licensees request that they be afforded a brief period of one week within which to file their applications for C1 construction permits.

Sincerely,



Sidney White Rhyme
Counsel for Deep South Broadcasting
Company, Licensee of WBAM-FM,
and
North South Broadcasting Company,
L.L.C., Licensee of WBHK(FM)

SWR/wp

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